

Application Number 10/530426  
Response to the Office Action dated 03/19/2008

**Amendment to the Drawings:**

The drawing attached hereto will replace all prior versions of the corresponding drawing in the application.

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**REMARKS**

Favorable reconsideration of this application is requested in view of the following remarks.

Fig. 4 has been amended to be designated as "Prior Art" as attached hereto.

The specification has been amended as supported by Fig. 4 and the specification at page 2, line 30 – page 3, line 8.

Non-elected claims 8-11 have been canceled without prejudice.

Claim 1 has been amended as supported by the specification at page 3, line 28 – page 4, line 18 and page 4, lines 34-37 in addition to editorial revisions; claim 5 has been amended editorially.

The drawings have been objected to as failing to comply with 37 C.F.R. 1.84(p)(4) because reference character "102" has been used to designate both the first substrate and the first information layer at page 2, lines 5-14 of the specification. The specification has been amended to designate the first substrate as "102" and the first information layer as "103". Therefore, Fig. 4 correctly reflects the structure of the conventional optical information recording medium and does not need the amendment in this respect, and other drawings do not include a layer designated as "102". Accordingly, this objection should be withdrawn.

Fig. 4 has been objected to as not being designated as "Prior Art". Fig. 4 has been amended to include the designation as prior art. Accordingly, this objection should be withdrawn.

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Claims 1 and 5 have been objected to because of the informalities. Claim 1 has been amended editorially to remove the informalities. Claim 5 has been amended editorially to clarify subjects of the relationships provided by the formulae. Therefore, this objection should be withdrawn.

Claims 1-7 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants respectfully traverse this rejection.

Claim 1 has been amended to clarify the order of the low refractive index layer and the transmittance adjusting layer, which are included in the first information layer, and the optical separating layer, which separates two information layers. Therefore, claim 1 is definite, and this rejection should be withdrawn.

Claims 1-3 and 6 have been rejected under 35 U.S.C. 102(b) as being anticipated by Higuchi et al. (U.S. Patent No. 6,009,070). Applicants respectfully traverse this rejection.

Higuchi fails to disclose that the recording layer changes between two optically different states that claim 1 requires. Instead, in the reference, information is recorded by forming bumps and depressions in the form of pits or grooves, i.e., physical changes (see coln. 5, 60-65; and coln. 6, lines 33-39). Therefore, there is no anticipation of claim 1.

Applicants respectfully question whether layers 3, 7b, and 8 in Fig. 4B of Higuchi actually correspond to the recording layer, the transmittance adjusting layer, and the low refractive index layer of claim 1, respectively, as designated in the Office Action. Layer 3 is a spacer that separates the first and the second information layers and the interface with the layer 4 would be a recording layer of an information layer distant from the light-incident side (see coln. 6, lines 33-39), while the interface of substrate 1 with the layer 7 is a recording layer of the information layer on the light incident side (see coln. 5, 60-65; and coln. 6, lines 3-7), which is the location of the presently claimed first information layer. As such, it can be seen that in the reference, the element identified in the rejection as the transmittance adjusting layer (7b) actually is formed on layer 7a, and is not formed on the low refractive index layer (8) as claim 1 requires (see Fig. 4B).

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Moreover, even if layers 3, 7b, and 8 of the reference are considered to correspond to the recording layer, the transmittance adjusting layer, and the low refractive index layer of claim 1, respectively, as designated in the Office Action, Higuchi fails to disclose that the low refractive index layer (8) is formed between the optical separating layer and the transmittance adjusting layer (7b) but discloses the low refractive index layer (8) is formed between the recording layer (3) and layer 7a (see Fig. 4B). The order of the layers required by claim 1 is an important feature because the low refractive index layer is inserted between the transmittance adjusting layer and the optical separating layer that contains moisture or the like in order to protect the transmittance adjusting layer from the influence of the moisture and the like of the optical separating layer and allow the transmittance adjusting layer to be formed stably. Therefore, claim 1 is distinguished from Higuchi, and the rejection of claims 1-3 and 6 should be withdrawn.

Claims 5 and 7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Higuchi et al. (U.S. Patent No. 6,009,070). Applicants respectfully traverse this rejection.

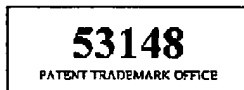
Claim 5 and 7 are distinguished from Higuchi for at least the same reasons as discussed above for claim 1. In addition, Applicants respectfully question the rejection's contention that the layers in the reference could be rearranged as an obvious matter of choice. Higuchi disclosed specific roles for the various layers that relate to the positions of the layers, and therefore their rearrangement would not be an obvious matter of choice. Therefore, claim 5 further is distinguished from the reference in this respect. Accordingly, claims 5 and 7 are distinguished from the reference, and this rejection should be withdrawn.

Claim 4 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Higuchi et al. (U.S. Patent No. 6,009,070) in view of Nishihara et al. (U.S. Patent Application Publication No. 2002/0054983). Applicants respectfully traverse this rejection.

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Claim 4 is distinguished from Higuchi for at least the same reasons as discussed above for claim 1. Nishihara does not remedy the deficiencies of Higuchi. Therefore, this rejection should be withdrawn. Applicants do not concede the correctness of this rejection.

In view of the above, Applicants request reconsideration of the application in the form of a Notice of Allowance.



Dated: June 19, 2008

DPM/my/ad

Respectfully submitted,

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